IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

MACA.No. 632 of 2006(A)

O.P(MV).NO.26/2001 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA DATED 27/09/2005.
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APPELLANT/1ST RESPONDENT:

P.T.MOIDU, S/O.ABDULLA,
PANGOTTUM THAREMMAL HOUSE,
P.O.MOKERI, NADAPURAM-673 516.

BY ADV. SRI.M.C.RATNAKARAN.

RESPONDENTS/RESPONDENTS 3 & 2 AND PETITIONER:
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1. **THE ORIENTAL INSURANCE CO.LTD.,**
   POST BOX NO.27, SREENIDHI BUILDING,
   NARAYANA NAGARAM, P.O.VATAKARA, PIN-673 101.

2. **NAUSHAD, S/O.AMMED, AGED 25 YEARS,**
   KANNAMKAI VEETTIL HOUSE, KAYAKKODI P.O.,
   NADAPURAM (VIA), PIN-673 519.

3. **R.P.ABHILASH, S/O.GANGADHARAN,**
   AGED 22 YEARS, RESIDING AT RAYAROTH PUTHIYOTTIL HOUSE, P.O.PURAMERI, VATAKARA-673 503.

BY ADV. SRI.DEVAPRASANTH.P.J,
SRI.A.R.GEORGE,
SRI.P.NARAYANAN.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 03/08/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR ,J

M.A.C.A. No.632 OF 2006

Dated, this the 19th day of March, 2007

REFERENCE ORDER

Appellant is the registered owner of a vehicle insured with the first respondent. The vehicle met with an accident. Third respondent filed O.P.(MV) No.26/2001 before Motor Accidents Claims Tribunal, Vatakara claiming compensation from the owner, driver as well as insurer. Tribunal found that petitioner is entitled to get an amount of Rs.24,180/- as compensation. Tribunal exonerated the insurer only on the ground that at the time of accident driver is not having a badge.

2. In **Govindankutty Nair v. Gopalakrishnan (2000 (1) KLT 224)** a Division Bench of this Court took a view that the requirement of driver's badge is mandatory and if the driver has no proper licence, Insurance Company must be exonerated from the liability. Division Bench relied on two decisions of the Supreme Court reported in **United India Insurance Company Ltd. Gian Chand & Ors. (AIR 1997 SC 3824) and Rukmani & Ors. v. New India Assurance Co. & Ors. (JT 1998(7) SC 473)**. In **Ramachandran v. Unnikrishnan (2006 (2) KLT SN. 15, Case No.20)** another Division Bench of this Court held that mere absence of a badge to drive a commercial vehicle is not sufficient, but it must be proved that it was the reason for the accident. The latter Division Bench relied on the decision of the Supreme Court reported in **National Insurance Co. Ltd. v.**

Swaran Singh (AIR 2004 SC 1531). The earlier Division Bench decision (Govindankutty Nair v. Gopalakrishnan (2000 (1) KLT 224) was referred to in Ramachandran's case (supra).

3. Learned counsel appearing for the insurer relied on a decision of the Supreme Court reported in **National Insurance Co. Ltd. Kusum Rai (2006 (2) KLT 300)**. It is contended by the counsel for the appellant that in Kusum Rai's case (supra) the question arises for consideration is absence of licence and not badge.

4. In view of the apparent conflict between the above two Division Bench decisions and also in view of the decisions reported in Swaran Singh's case (supra) and Kusum Rai's case (supra) I am of the view that the matter is to be heard by a Larger Bench.

In the result, case is adjourned for being heard by a Division Bench. Since there are number of similar cases, office is directed to place the records before the Hon'ble Acting Chief Justice forthwith, for necessary orders.

K. PADMANABHAN NAIR
JUDGE

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